

ORDER NO. 2571

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Periodic Reporting
(Proposal Thirteen)

Docket No. RM2015-7

ORDER GRANTING MOTION OF UNITED PARCEL SERVICE, INC.
FOR ACCESS TO CERTAIN NON-PUBLIC MATERIAL
AND EXTENDING REPLY COMMENT DEADLINE

(Issued July 8, 2015)

I. SUMMARY

This Order resolves motion practice concerning comment deadlines and access to certain previously-filed and anticipated non-public material.¹ For the reasons discussed below, the Commission extends the deadline for reply comments by one week. The Commission also grants the UPS Motion as it relates to access to non-public material.

¹ See United Parcel Service, Inc.'s Motion for Extension of Time to File Reply Comments and for Other Relief, June 30, 2015 (UPS Motion) and Response of the United States Postal Service to UPS Motion for Extension of Time to File Comments and Other Relief, July 2, 2015 (Postal Service Response).

II. BACKGROUND

Scheduling. The existing procedural schedule establishes July 8 and July 15, 2015, respectively, as the dates for filing initial and reply comments addressing UPS's supplemental report.² UPS seeks a one-week extension of the reply comment deadline (from July 15 to July 22, 2015) or alternatively, three additional business days to file its reply comments. UPS Motion at 2, n.4.

UPS's request is based on its understanding that initial comments (from the Postal Service and Amazon) will address substantive matters and include quantitative, econometric analyses, and a concern that its counsel and consultants will not be able to conduct a meaningful review and prepare responses within one week. UPS Motion at 2. UPS also notes that its lead counsel will be on vacation from July 7 to July 13, 2015. *Id.* n.3.

The Postal Service opposes UPS's proposed scheduling change. It acknowledges that it has informed UPS that it will be filing quantitative analyses on econometric issues; however, it maintains that it also informed UPS that these materials will not include any new models, but will instead consist of diagnostic analysis of the models UPS consultant Dr. Neels already has submitted. Postal Service Response at 2. Moreover, the Postal Service takes issue with UPS's anticipatory assessment as to the scope and complexity of the initial comments and characterizes the UPS Motion as premature on those grounds. *Id.* In addition, it asserts that UPS argues, in essence, that the Commission's initial schedule did not allow an appropriate amount of time to review initial comments on UPS's supplemental report and maintains that UPS should have anticipated that the responses would be technical in nature. *Id.* at 2-3. The Postal Service concludes that more time is unnecessary and would be prejudicial to the interests of the Postal Service and possibly other parties. *Id.* at 3. At the same time, the Postal Service notes that UPS mentions a scheduling conflict, and suggests

² Order Granting United Parcel Service, Inc. Motion for Issuance of Commission Information Request No. 1 and Revising Procedural Schedule, April 23, 2015, at 12 (Order No. 2455).

extending the initial and reply comments from July 8 and July 15, respectively, to July 14 and July 21, 2015. *Id.*

Access to non-public material. UPS asks the Commission to extend the same non-public access granted to UPS's outside counsel and consultants in Order No. 2363 (February 24, 2015) to three additional outside consultants. UPS Motion at 3. UPS identifies each of the consultants by name, states that they have signed the same standard protective conditions as UPS's current outside consultants and counsel, provides the executed documents in an attachment, and states that they will abide by the same terms and conditions. *Id.* The Postal Service does not oppose UPS's request to extend access to previously-filed non-public material to additional UPS consultants. Postal Service Response at 1.

In addition, UPS states that it has been informed by Amazon that Amazon's anticipated July 8, 2015, submission will include one or more non-public library references using Postal Service data. UPS Motion at 3. UPS notes that the Commission previously granted UPS's outside counsel and consultants access to the Postal Service's non-public material. *Id.* To facilitate review of Amazon's econometric work, UPS requests that the Commission provide UPS's outside counsel and consultants who have signed protective conditions with immediate access to these library references as soon as they are filed, without the need for a post-filing order from the Commission. *Id.* UPS further states that Amazon has informed UPS that it has no objection to this request. *Id.* The Postal Service does not oppose this request. Postal Service Response at 1.

III. COMMISSION ANALYSIS

Scheduling. The Commission has reviewed the comments received by the Postal Service and the reasons UPS raised in support of its proposed change to the procedural schedule. Based upon this review, the Commission concludes that it is appropriate to extend the reply comment deadline by one week. The new deadline for reply comments is July 22, 2015. This brief extension will promote development of a

more complete record, will not prejudice parties,³ and will not unduly delay the proceeding.

Expanded access to non-public material. Commission rule 3007.40 governs access to non-public materials, including expedited access. It provides that any person may file a motion requesting access, and requires that the motion include a detailed statement providing justification for access, a list of relevant affiliations, and whether the party is affiliated with the delivery services, communications, or mailing industries. 39 C.F.R. §§ 3007.40(a)(1) and (a)(2). A party seeking expedited access may attach to the motion an executed copy of protective conditions. *Id.* at § 3007.40(b).

The Commission finds that the UPS Motion satisfies the requirements of Commission rule 3007.40 for access to non-public material, including those in Commission rule 3007.40(b) that pertain to motions seeking expedited treatment of access requests. In addition, the UPS Motion is unopposed as it relates to access to non-public material. Accordingly, the Commission concludes it is appropriate to grant access to non-public material the Postal Service has previously filed in this docket to the additional persons identified in the UPS Motion. It also concludes that it is appropriate to grant access to non-public material in anticipated Amazon submissions to UPS counsel and consultants who have executed signed confidentiality agreements. Access to the previously-filed Postal Service non-public material is effective upon issuance of this Order. Access to non-public material in anticipated Amazon submissions is effective upon the filing of Amazon's initial comments.

It is ordered:

1. The Commission extends the date for filing reply comments on the UPS supplemental report from no later than July 15, 2015, to no later than July 22, 2015.

³ The Postal Service asserts that the extension is prejudicial to its interests and possibly the interests of other parties, but provides no support for this assertion.

2. The UPS Motion, filed June 30, 2015, is granted with respect to access to previously-filed Postal Service non-public material for the three additional consultants identified in the UPS Motion who have signed confidentiality agreements attached to the UPS Motion.
3. The UPS Motion, filed June 30, 2015, is granted with respect to immediate access to Amazon submissions containing non-public material, effective upon the filing of Amazon's initial comments.

By the Commission.

Shoshana M. Grove
Secretary